

at 1183 msl because of sedimentation. Consequently, Hualapai River Runners trips would be forced to take out at South Cove under all alternatives. This impact is unacceptable.

Taking out at South Cove would cost the Hualapai River Runners in fuel, time, safety, and labor costs, and will likely cost the Hualapai River Runners in lost business. A South Cove takeout would delay the takeout time by one to two hours, exhausting the river guides and preventing the Hualapai River Runners from meeting the timetables for the package tours through which a substantial portion of these trips are sold. If the Hualapai River Runners cannot meet these schedules, their business partners may cease booking blocks of trips with the Hualapai River Runners. The Hualapai Tribe would be harmed by lost sales tax, trespass fee payments and percentage of revenue entitlements, and by increased unemployment on the Reservation.

The DOI Violates NEPA, the Trust Duty, the NHPA, and Executive Order 13007 by Failing to Evaluate Cultural Resource Impacts, Protect Cultural Resources, and Consult with the Hualapai Tribe and Tribal Historic Preservation Officer.

The DOI has completely overlooked its duties to avoid adverse effects to Hualapai traditional cultural properties ("TCPs") on Hualapai Tribal lands and to preserve and provide Hualapai access to Hualapai TCPs and sacred sites on federal lands. The DOI has also failed to undertake the required consultation with the Hualapai Tribe and Tribal Historic Preservation Officer ("THPO") regarding these TCPs and sacred sites.

Section 106 of the NHPA, 16 U.S.C. § 470f, requires federal agencies to take into account the effects of their "undertakings" (actions) on historic properties and to afford the Advisory Council on Historic Preservation an opportunity to comment. Congress amended the NHPA in 1992 to require consultation with Indian Tribes, to allow THPOs to assume the consultation and concurrence role afforded State Historic Preservation Officers ("SHPOs") for undertakings on tribal lands, and to clarify that properties of traditional religious and cultural importance to an Indian Tribe are eligible for inclusion on the National Register of Historic Places ("NRHP") (i.e., that they can be historic properties). See 16 U.S.C. §§ 470a(d)(2), 470a(d)(6)(A), and 470a(d)(6)(B). The Hualapai THPO assumed the role of the SHPO for Hualapai Tribal lands by agreement with the National Park Service in 1996.

The DEIS states that "Reclamation has determined development and implementation of interim surplus criteria meets the definition of an undertaking, but an undertaking that is without potential to effect historic properties." DEIS at 5-3. Hence, the DEIS concludes, "Reclamation has fulfilled its responsibilities to take into account the effects of the development and implementation of interim surplus criteria on historic properties." *Id.*

This conclusion is based on an erroneous assumption that "there is virtually no chance cultural resources retaining qualities that would qualify them for consideration as historic properties potentially eligible for inclusion on the NRHP exist within the [area of potential

6: Thank you for your comments and for bringing to our attention your concerns regarding Reclamation's on-going operation of the Upper and Lower Colorado River. Per a request from the Nevada State Historic Preservation Officer (SHPO), the matter of effects to historic properties that might result from development of Interim Surplus Criteria (ISC) has been forwarded to the Advisory Council on Historic Preservation (Council). Development and implementation of ISC falls within the range of on-going operations, and the reservoirs and the River will continue to be operated within historic operational parameters under both baseline conditions and action alternatives. Because of this, Reclamation believes many of the issues you raise with regard to historic properties are better addressed under Section 110, rather than Section 106 of the National Historic Preservation Act. Reclamation is aware of its responsibilities under Section 110 for managing historic properties on lands under its jurisdiction and will commit to consulting with the Hualapai and other tribes within that framework. In accordance with the direction provided by EO 13007, Reclamation is also committed to working with the Hualapai and other tribes with ties to the Lower Colorado River to accommodate access to and use of sacred sites, and to the extent practicable, not adversely affect the physical integrity of sacred sites which have been identified by the tribes as being located on lands under its jurisdiction. If the Hualapai or other tribes have information concerning sacred sites that are being impacted by on-going reservoir and river operations, Reclamation urges the tribes to bring these situations to the attention of the appropriate Reclamation office.

effect] of the present undertaking” because these cultural resources “have been repeatedly inundated, exposed, and re-inundated” since Hoover Dam and Glen Canyon Dam were constructed. *Id.* at 3.13-5. In other words, DOI is assuming that water and weathering have rendered all otherwise eligible properties ineligible for the NRHP.

Such an assumption is not valid for “properties of traditional religious and cultural importance to an Indian Tribe” eligible for the NRHP under 16 U.S.C. §470a(d)(6)(A). The DEIS is apparently invoking the requirement under the criteria of NRHP eligibility that the property have “integrity of location, design, setting, materials, workmanship, feeling, and association.” See 36 C.F.R. § 60.4. However, as explained in National Register Bulletin 38, “Guidelines for Evaluating and Documenting Traditional Cultural Properties”:

A property may retain its traditional cultural significance even though it has been substantially modified. . . . [T]he integrity of a possible traditional cultural property must be considered with reference to the views of traditional practitioners; if its integrity has not been lost in their eyes, it probably has sufficient integrity to justify further evaluation.

National Park Service, National Register Bulletin 38, “Guidelines for Evaluating and Documenting Traditional Cultural Properties” at 10.

Moreover, a “structure” need not remain in order for a TCP to be a historic property eligible for the NRHP:

Construction by human beings is a necessary attribute of buildings and structures, but districts, sites and objects do not have to be the products of, or contain, the work of human beings in order to be classified as properties. . . . A natural object such as a tree or a rock outcrop may be an eligible object if it is associated with a significant tradition or use.

Id. at 9.

Clearly, DOI cannot assume without consultation with the Hualapai Tribe and THPO that the proposed undertaking “is without the potential to effect” Hualapai TCPs. By these comments, the Hualapai Tribe and THPO place the DOI on notice that they believe Hualapai TCPs and sacred sites both on and off Hualapai tribal lands may be adversely affected by the proposed undertaking. DOI must consult with the Hualapai Tribe and THPO in compliance with NHPA § 106 and the Advisory Council’s regulations at 36 C.F.R. Part 800. DOI also must fulfill its trust duty to the Hualapai Tribe to protect Hualapai TCPs located on Tribal lands as trust resources. To the extent consistent with the need to keep Hualapai TCP information confidential to protect the sites from vandalism and ensure that ceremonial use is not hindered, DOI also must disclose impacts on these sites in the DEIS.